

# ENVIRONMENTAL HEARINGS OFFICE FOREST PRACTICES APPEALS BOARD

## Procedural Assistance FAQs

### DISCLAIMER

You can choose to represent yourself in an appeal before the Forest Practices Appeals Board, without the help of a lawyer. If you decide to represent yourself, the information on this website will help you prepare your case for hearing. However, this information is not legal advice.

When you represent yourself and manage your own case, you must follow the rules that apply to the Forest Practices Appeals Board. These “Frequently Asked Questions” discuss some of the most common rules and issues you will face during your appeal. Please also look at the rules of the Board and other resources on this website for additional useful information.

The Board staff can answer some questions about procedural rules, but they cannot act as your lawyer or give you legal advice. If you have questions about what decisions you should make, or what strategies you should follow in your appeal, or if you need help filling out forms or creating legal documents, you are strongly encouraged to contact an attorney. Proceedings before the Board are formal and quasi-judicial in nature—in other words, they are a lot like a regular court trial in front of a judge.

### FREQUENTLY ASKED QUESTIONS

**NOTE: After June 30, 2010, all forest practice appeals must be filed with the Pollution Control Hearings Board. The Forest Practices Appeals Board will be abolished pursuant to Substitute House Bill 2935, Laws of 2010, which consolidated environmental and land use hearings boards.**

#### **1. How do I file an appeal?**

You must prepare a written document that identifies the decision you are appealing and the reasons for your appeal. This written appeal document must be **filed** with the FPAB within the required deadline. At the same time the appeal document is filed, copies may be required to be filed with the State Department of Natural Resources and the State Attorney General, and **served** on the permit applicant, depending on what type of action is being appealed. See **WAC 223-08-075 through -085**. Different deadlines apply to different types of appeals, depending on the type of decision or government action being appealed. Read the rules carefully.

More detailed information about the contents of the appeal, where to file the appeal, and how to serve the appeal is available under some of the following questions.

*NOTE:* Requests to DNR for reduction of a civil penalty, or appeals to DNR of a notice to comply are governed by different rules. See **WAC 332-08 and WAC 222-46-030 and -060.**

**2. Is there a fee to file an appeal?**

No.

**3. What should be in my appeal?**

The appeal should contain the following information:

- (1) Your name, mailing address, daytime telephone number and fax number (if available) and the name, address and telephone number of your attorney (if you are using one).
- (2) A copy of the forest practices application, if one is involved.
- (3) A copy of the decision or permit you are appealing.
- (4) Identification of the other **parties** in the case. In every case, you must name DNR and the forest practices permit holder, if a forest practices permit is involved.
- (5) A short and plain statement why you are appealing and the basis for your appeal.
- (6) A brief statement of what you want the Board to do (the “relief” or “remedy” you are seeking).
- (7) Your signature, or the signature of your attorney. The signature certifies that the content of the appeal is true.

The rules that apply to the content of your appeal, and sample forms, can be found in **WAC 223-08-080.**

**4. When is the deadline for my appeal?**

**IMPORTANT: You must meet the deadline for filing your appeal or the Board will not be able to consider and decide your case.**

Different deadlines apply to cases before the FPAB, depending upon the type of decision or government action that you are appealing. One of the most common types of appeals is the appeal of an approval or disapproval of a forest practices permit. This appeal must be filed at the FPAB within thirty days (30) from the date of the approval or disapproval of the permit. At the same time, the appeal must be filed with the DNR and the Attorney General. For the specific deadlines for all types of appeals, refer to **WAC 223-08-085.**

*NOTE:* some of these deadlines are as short as fifteen (15) days.

**5. How do I file my appeal at the Board?**

You can deliver your appeal in person to the Environmental Hearings Office.

Physical address:

4224 – 6<sup>th</sup> Avenue SE, RoweSix, Building 2

Lacey, WA 98504-0903

See [[Map & directions](#)]

Or you can mail it to the Environmental Hearings Office.

Mailing address:

PO Box 40903

Lacey, WA 98504-0903

**IMPORTANT: Your appeal will be considered filed on the date it is *actually received* by the Board (*not* the date you mail it).**

**6. Can I e-mail an appeal to the Board?**

No.

**7. Can I fax an appeal to the Board?**

Yes. If you choose to fax your appeal, it must be received by 5:00 p.m. PST to be considered filed on that day. You must also mail a copy of your appeal to the Board on the same day you fax it.

**8. How many copies of the appeal documents do I file?**

The original and one copy of the necessary appeal documents.

**9. Do I have to tell anyone else I am filing an appeal?**

Yes, you must [serve](#) copies of the appeal. Who must be served varies depending upon the type of appeal. Generally, a copy of the appeal should be filed (effective upon receipt) with the DNR and the State Attorney General. Generally, the permit holder should be served (effective on date of mailing). See [WAC 223-08-075 through -085](#) for the specific service requirements for each type of appeal.

**10. How do I serve the appeal?**

You [serve](#) the appeal by providing a copy of the appeal documents on the people who are required to be served (see Answer to Question 9 above.) You can do this by personally delivering or mailing the appeal documents. If you mail the appeal—to the proper address and with adequate postage—it is

considered served on the date it is mailed. (**NOTE:** This is different from **filing**, which is only considered complete when received).

You must file your appeal with the Board (and sometimes the DNR and Attorney General) *and* complete service within the deadlines for the Board to be able to consider your case. See **WAC 223-08-075 and -080**. If you fail to complete these tasks on time, the Board must **dismiss** your case which will end your appeal.

**11. What happens once my appeal is filed with the Board?**

The Board will send you and the other parties an **initial scheduling letter** that sets up a **Pre-Hearing Conference** and sets important dates for your hearing. The letter will also give you some useful information about how your case will move forward and other services available at the Board (such as mediation).

**12. What will happen at the Pre-Hearing Conference and how should I prepare?**

A Pre-Hearing Conference is a telephone meeting with the **Presiding Officer** (Judge) and all the **parties** (and their attorneys if they have attorneys) to discuss the case, set the hearing schedule, and determine the issues raised by your appeal. The Pre-Hearing Conference is also a good time to discuss possible settlement options and for you to ask the Presiding Officer any questions about the appeal process.

Usually, the Presiding Officer will call you and the other **parties**. You should check the phone number listed in the initial scheduling letter to make sure the Board has the right phone number for the Presiding Officer to reach you on the day of the Pre-Hearing Conference.

The initial scheduling letter asks you to submit a list of proposed legal issues and possible **witnesses** and **exhibits** to discuss at the Pre-Hearing Conference. Generally, you will need to file and serve this document at least one day before the Pre-Hearing Conference. You should include the names of all of the witnesses you think you might be calling to testify at the hearing. Witnesses should either have first-hand information to provide to the Board about the facts of your case, or they should have special expertise in a technical area related to your case. You should also include a list and a brief description of each exhibit you would like the Board to review and consider as evidence on your behalf at the hearing. The document you **file** with the Board should also include a statement of the legal issues in the case (see description of legal issue below). A sample form is available to help you prepare your proposed legal issues and preliminary lists of witnesses and exhibits. See **Proposed Legal Issues and Preliminary List of Witnesses and Exhibits**.

It is a good idea to have your calendar with you at the Pre-Hearing Conference so that you can discuss any scheduling problems with the Presiding Officer. Following the conference, the Presiding Officer will send out a **Pre-Hearing Order** stating the legal issues in the appeal, all of the dates that were established to guide the case to hearing, and other important information about the appeal process.

**13. If I'm not available on the Pre-Hearing Conference date, can I reschedule it to a different time?**

If you have a conflict on the date or time of the Pre-Hearing Conference, you should contact the other parties to see if they will agree to reschedule it. If they agree, you should then contact the Board's Hearing Coordinator by telephone to request the Presiding Officer to change the Pre-Hearing Conference date. Usually, the Presiding Officer will agree, and a new date for the conference will be established. The parties will then receive a letter confirming the new date.

If the other side doesn't agree to reschedule the Pre-Hearing Conference, you can request a conference with the Presiding Officer for all parties to discuss scheduling options.

**14. What is a "legal issue" that is mentioned in the letter setting up the Pre-Hearing Conference?**

Legal issues are the questions you want the Board to address about your case.

When identifying your legal issues, think broadly about *why* you disagree with the decision you have appealed. Then try to identify the specific areas of disagreement between you and the other side. These areas of disagreement will form the basis for the legal issues.

Here is an example. You are appealing a penalty issued to you by an agency. Why do you think the penalty is wrong or unfair?

- Is it because you don't think the violation happened?
- Is it because you don't believe you committed the violation or you think someone else is responsible?
- Is it because, even if you admit to committing the violation, that you believe the penalty is too large? If so, why do you think it is too much?

This type of thinking should help you identify the specific areas of disagreement you have with the agency. A legal issue is usually stated as a question about the disagreement—a question that the Board will answer "yes"

or “no” after hearing all the relevant facts of the case. It should *not* include your arguments or state the facts of your case.

For the example above, possible legal issues might be:

- Did the violation occur as alleged by the agency?
- Can the agency prove who is responsible for the events that caused the violation?
- Is the amount of the penalty reasonable under all the circumstances?

## **15. What is a motion?**

A **motion** is a request to the Board or the **Presiding Officer** to do something in your case, after the appeal has started. “Motion” is the name of the document that you, or one of the parties, files to ask the Board to make a ruling or take some other action in the case. Some common types of motions include:

- **Motion for Summary Judgment:** Asks the Board to resolve some or all of the issues presented in the case on the basis of the law, and record before the Board on the motion. This type of motion can result in some or all of the appeal being resolved before a hearing.
- **Motion for Stay:** Asks the Board to enter an order that will last only until the Board has a chance to make a final decision on the appeal.
- **Motion for Continuance:** Asks the Board to postpone a deadline, such as when certain papers must be filed or when the hearing will be held.

Motions concerning relatively minor or procedural matters (such as a request for more time to file a document) are called “non-dispositive” motions.

Motions concerning matters that are central to the case (such as a motion for summary judgment or a motion to dismiss) are called “dispositive” motions. A dispositive motion can “dispose of” (or end), all or part of the appeal.

**NOTE:** A motion does not start a case. For that, you must file an appeal or petition as directed by the rules of the Board that handles the kind of case you have.

## **16. How do I make a motion?**

The most common way to make a motion is by filing a written request with the Board and serving it on the other parties in the case. The written motion will include what you are asking the Board to do. It should also tell the Board what laws and reasons support your request. Motions usually include separate written statements by people with personal knowledge of the facts (called “**Declarations**”). These statements are signed and sworn to be true and correct under penalty of the perjury laws of the State of Washington.

Because both sides must have an opportunity to tell the Board their position about a motion, you must **serve** a copy of your motion and all supporting paperwork that you file with the Board to the other side.

**17. What happens if I get a motion from the other side?**

The person receiving a motion has the right to respond in writing to that motion. Your Pre-Hearing Order will include the deadline for you to file a response to a motion. Your response should include the legal reasons why you think the Board should not grant the motion and a **declaration** with the important and relevant facts supporting your response.

After you file your response, the party that made the motion has a final chance to reply in writing to the points you made in your response. The deadline for this reply is also stated in the Pre-Hearing Order.

Most motions are decided after the Board has received all written materials from both sides. Sometimes the Board will ask the parties to appear in person (or on a telephone conference) to explain their positions in an “**oral argument**” on the motion.

**18. What is a declaration? Do I have to have one?**

A declaration is a sworn statement of facts made under penalty of perjury under the laws of the State of Washington. A declaration should be in writing, signed by the person making the statement, and dated. The person signing the declaration must have personal knowledge of the facts stated in the declaration. The document does not need to be notarized, but it must include a specific statement that it is true and correct under penalty of perjury. A sample form is available to help you prepare a declaration. See **Declaration Form**.

**19. When will a motion be decided?**

After the time has passed for each party to file their response(s) and reply(s) to the motion, the Board will begin its consideration of the arguments. It might take some time before the Board issues a decision on the motion. Usually a written decision will be issued within a few weeks on a simple motion (or even less for non-dispositive motions). But it could also take longer, depending on the Board’s other obligations and the complexity of the issues rose in the motion.

**20. Can my case be “thrown out” by the Board?**

No appeal will be **dismissed** without a sound legal reason. Before the Board dismisses a case, all parties have an opportunity to tell the Board their positions.

Usually, a case is dismissed when one party asks for the **dismissal** by making a motion. To have your case dismissed, the other side must provide a legal and factual basis to show that there is no possible way for your appeal to succeed, given the requirements of the law. Once a party makes a request for dismissal, and all sides have had an opportunity to tell the Board their positions, the Board must issue a written decision. If the Board dismisses your case, it will explain the legal reasons in its written order.

**21. I need more time. What should I do?**

There are a couple ways you can ask for more time (for example, if you need more time to file a response, gather information, or prepare for the hearing itself).

The easiest way is to talk with the other side and try to agree on some additional time. If the other side agrees, then you can tell the Presiding Officer of your agreement and request the Board to grant a specific amount of additional time. Usually (but not always), more time will be granted when all parties agree.

If the other side is *not* willing to give you additional time, you can file a request for a continuance or you can contact the Board to request a telephone conference with the Presiding Officer. At the conference, the Presiding Officer will hear from both sides about their reasons. Depending on the situation, the Presiding Officer may decide during the call whether or not to give you additional time. Or the Presiding Officer may direct you and the other side to file and respond to a more formal written motion for a continuance.

**22. Do my documents have to have numbered lines and look like the other documents?**

No, numbered lines are not required. Numbers on the side are used for convenient reference and are only a customary format for legal court documents. You only need to make sure your documents are clearly written in ink or typed, legible, signed and dated.



### **23. How do I get information about my case from the other side?**

Each side has a right to know what documents and other evidence the other side will present at the hearing. This means each party must be able to see and make copies of documents and other relevant information well before the hearing.

The process of exchanging information and documents before the hearing is called **discovery**. The discovery process can be done *informally* among the parties, or more *formally* according to court rules.

- *Informal discovery*. When parties work together informally during the discovery process, they do this by telephone, letters, email, fax, or getting together in person to look over files, photographs, or other documents relevant to the case. To use informal discovery, all parties must agree and cooperate fully.
- *Formal discovery*. The Presiding Officer will usually set a formal discovery schedule during the Pre-Hearing Conference. The formal discovery process involves exchanging information and documents only through formal written requests and responses that must comply with certain court rules. **CR 26-37**.

### **24. Do I have to participate in discovery?**

Despite what you may see in television or movie courtroom dramas, full and open exchange of information is required of all parties involved in a case. In other words, there should be no surprises at the hearing. Whether you are using informal or formal discovery, the Board expects you and the other parties to cooperate and to use the discovery process fairly and in good faith.

Each side must timely respond to requests for information from the other side and cooperate in the scheduling of all efforts related to discovery. Abusive or overly burdensome discovery (for example, lengthy lists of questions on topics not relevant to the case) is not an acceptable practice.

### **25. How does formal discovery work?**

There are specific Civil Rules of Procedure (court rules) that govern how the formal discovery process works. The four most common types of formal discovery are:

- Interrogatories, which are written questions that a party must answer, in writing and under oath, within a specified time frame (see **CR 33**).

- Requests For Production of Documents, which is where one party asks another party, in writing, to provide relevant documents (see [CR 34](#)).
- Depositions, which are proceedings where witnesses answer questions asked by the other side while under oath, and the interview is recorded by a court reporter (see [CR 30-32](#)).
- Requests For Admissions, which are statements that a party must either admit or deny within a specified time frame (see [CR 36](#)).

**26. The other side won't give me information or has stopped cooperating. What can I do?**

All parties have an obligation to first try resolving [discovery](#) disputes among themselves, without getting the Board involved. If that doesn't work, your next step depends on whether you are using informal or formal discovery (see questions above).

If you have been working *informally* and the other side stops cooperating, then you may be able to switch to the formal discovery process. To do this, you may need to ask the Presiding Officer to revise your [Pre-Hearing Order](#) if it doesn't already include a formal discovery schedule or if the discovery deadline has passed.

If the other side is refusing to respond to a *formal* discovery request, you can ask the Presiding Officer to order them to respond. To discuss these kinds of issues with the Presiding Officer and the other side, you can request a "discovery conference" [CR 26\(f\)](#). At the discovery conference, the Presiding Officer will listen to all sides and make a decision about whether, when, or how a party must provide the requested information.

**27. What happens to the Order (or Penalty) I am appealing between now and the hearing?**

An agency order remains in effect unless there is something in writing from the agency or the Board that [stays](#) that order. A stay is an action or order that delays or stops the effectiveness of the agency order for a certain amount of time, usually until the appeal is finished.

A stay can be entered either by the agency that issued the order you are appealing, or by this Board. (**Note:** If you are appealing a penalty, the penalty is *automatically* stayed during the appeal process).

If the agency has not agreed to delay the effectiveness of its order, you can ask the Board for a stay of the agency order. If the Board determines that you meet the legal standards for a **stay**, and grants your stay request, the Order would not be effective during the appeal process.

**28. How do I get a stay? (WAC 223-08-087)**

You can request a stay (called “temporary suspension or discontinuance”) when you file your appeal document or, once your case has been filed, you can make a separate request for a stay through a motion. The Board rules require that you meet specific legal requirements to get a stay. These requirements include providing “security” to cover costs and damages from the wrongful imposition of a stay. Be sure to review **WAC 223-08-087** when preparing your request. You must tell the Board and the other parties, in writing, why you are entitled to the stay and provide the information, documents, and legal arguments why your request should be granted.

When you request a stay, the Presiding Officer will set a schedule so the other side can respond to your request in writing. You will have a chance to reply in writing to their response. The Board sometimes asks the parties to also present **oral arguments** on a request for a stay.

**29. How do I prepare for my hearing?**

You are responsible for presenting testimony and/or exhibits to the Board that will support your case. Your hearing preparation should include obtaining and reviewing copies of documents, planning questions to ask witnesses, and notifying your witnesses of the time and location of the hearing. Sometimes it may be necessary to issue a subpoena to make sure a witness will attend. If you think this may be needed in your case, you may request the Presiding Officer to issue subpoenas if required. (See questions 32-33 below.)

**30. What happens during the hearing?**

The hearing is your opportunity to present information and arguments about how the law and factual evidence supports your position. A record of the hearing will be made by a court reporter.

The Presiding Officer will meet with the parties before the hearing starts to see if the parties have agreed to admit the exhibits into evidence and to see if there are any other issues that need to be resolved before starting.

The Presiding Officer will start the hearing by taking appearances (introductions) from the parties. Generally, each side is given the chance to make an opening statement, present witnesses, question the witnesses presented by the other parties, present documents, and challenge documents

presented by the other parties. Finally, each side will have an opportunity to make a closing statement. The Board will then consider all the evidence and law and issue a written decision later.

**31. Where is the hearing going to be held?**

The location for the hearing will be discussed with the parties at the Pre-Hearing Conference. The Board will set the location based on a number of factors including the convenience of witnesses and counsel, travel costs, and availability of a suitable location near the site in controversy. Every effort is made to hold the hearing at a convenient location.

**32. Do I have to subpoena witnesses?**

To get **witnesses** to come to the hearing, usually all you need to do is ask them to testify, especially if the witness is a friend or neighbor. If the witness is an agency employee who hasn't been listed by the agency as one of their witnesses, or someone who is opposed to you or your case, you may need to have a subpoena issued by the Presiding Officer to require that person's attendance. You should ask the Presiding Officer to issue a subpoena at least a month before the hearing, or as soon as you know who you plan to call as witnesses.

**33. How do I subpoena a witness?**

The presiding officer for an appeal can issue a subpoena. The procedures for obtaining a subpoena are found in **RCW 34.05.446**. The person asking the Presiding Officer to sign a subpoena should make a written request showing the general relevance of the testimony from the witness. The person requesting a subpoena should prepare the subpoena with the name of the Board and the title of the case. The subpoena commands the person to whom it is directed to attend and testify or produce identified documents at a specified time and place (usually the hearing date and location). When the subpoena has been signed by the Presiding Officer, you are responsible for making sure it is then served on the named witness. (See **Civil Rules for Superior Court 45(c)**). You may also be required to pay the witness for mileage and one day's attendance fee as allowed by law. These costs are paid by the party asking for the witness to attend.

**34. Can my witness testify in writing?**

Witnesses cannot normally testify in writing because they need to be present for cross-examination and questions from the Board. If a particular witness has a physical or medical issue that makes it impossible for them to attend, you must discuss that with the Presiding Officer well in advance of the hearing so that alternative arrangements for taking the testimony can be made.

**35. Does my witness have to be at the hearing? They work and can't get off.**

Except in unusual circumstances, witnesses do have to come to the hearing and answer questions from the opposing party and the Board members. If you have concerns about a witness being able to attend the hearing you should discuss your concerns with the other parties and the Presiding Officer prior to the hearing.

**36. I want to file a petition for reconsideration. The rule says 10 days—is that 10 working days, or 10 calendar days? (WAC 223-08-255)**

Ten *calendar* days. You need to file it within 10 calendar days after the “date of *mailing*” of the final decision to the parties. (**NOTE:** The “date of mailing” means 10 days after it is mailed by the agency—not 10 days after you *receive* the final decision). This means you have a very short time to file a petition for reconsideration. You do not have to file a petition for reconsideration in order to appeal the Board’s decision to Superior Court.

**37. If I file for reconsideration, what happens to the time limit for appealing to Superior Court?**

If you have filed your request for reconsideration within the time limit, the time limit for appealing the Board’s decision is suspended until the petition for reconsideration is done. You will still have 30 days to appeal to Superior Court after the Board issues its decision on reconsideration. If the Board doesn’t act on a petition for reconsideration within 20 days, the petition is considered denied. The time for appealing the Board’s final order to Superior Court will then start to run from that day.

**38. What happens if I won but the other side petitions for reconsideration?**

The Board may require you to file a response (called an “answer” to the petition for reconsideration. Your answer should be filed with the Board and served on all parties within five days of when you received the petition.

**39. Does the Board always respond to a petition for reconsideration?**

No. Usually the Board will respond in some way (for example, by denying the petition, reversing or modifying its decision, or possibly even reopening the hearing if convinced that is necessary). But the Board may also choose *not* to act on the petition. If the Board doesn’t act on a petition for reconsideration within 20 days, the petition is considered denied. The time for appealing the Board’s final order to Superior Court will then start to run from that day.

## Glossary of Terms Used in FAQ

Continuance	A postponement of the hearing or other appeal deadline that delays or reschedules the date something is due to happen.
Declaration	A written statement that is signed and sworn to be true and correct under penalty of the perjury laws of the State of Washington.
Discovery	The process of exchanging information between the parties before the hearing.
Dismissal	An order rejecting an appeal and ending the case.
Exhibit	A document used as evidence in a hearing that contains or shows information relevant to the facts of a case. Examples of exhibits include papers, letters, reports, photographs, receipts, maps, etc...
File	The process of delivering the original appeal or other documents to the Board.
Initial scheduling letter	A letter sent by the Board to all the parties of a case soon after an appeal is filed that sets up a Pre-Hearing Conference, establishes other important dates for your hearing, and gives additional directions for the parties to follow.
Motion	A request from a party for the Presiding Officer or the Board to do something in a case (for example, to make a ruling or take some action before the hearing). The Board's rule that applies to motions is WAC 371-08-450.
Oral argument	A conference attended by all parties and the Board (either in person or by telephone) where parties present and explain the reasons supporting their position on a motion and respond to questions from the Board.
Parties	The persons (or businesses, agencies, or other entities) who file an appeal, are named in an appeal, or who are allowed to participate in an appeal.
Pre-Hearing Conference	A telephone meeting with the Presiding Officer and all parties (and/or their attorneys) to discuss the case, set the hearing schedule, and determine the legal issues in the appeal.
Pre-Hearing Order	The document issued by the Presiding Officer after the Pre-Hearing Conference that sets the hearing date and establishes the legal issues, deadlines, and other requirements that will govern the appeal.
Presiding Officer	The administrative law judge or Board member who conducts the hearing and all related conferences and regulates the course of the appeal.
Serve	The process of delivering a copy of an appeal or other document to all the parties in a case. Service can be completed by personally delivering or mailing the

	documents. If mailed to the proper address and with adequate postage, a document is considered served on the date it is mailed.
Stay	An action or order that delays or stops the effectiveness of an agency order for a certain amount of time, usually until the appeal is finished.
Witness	A person who testifies at a Board hearing under oath about facts and other information based on his or her personal knowledge or experiences related to the case.